

REMARKS/ARGUMENTS

Claims 3-6, and 13-16 remain in this application. Claims 1, 2, and 7-12 have been cancelled.

The examiner has acknowledged that claims 13-16 are directed to allowable subject matter. Allowable claim 13 has been rewritten in independent form and is now believed to be allowable. Claims 14-16 are dependent on claim 13 and also should now be allowable.

Applicants respectfully traverse the rejection of claims 3-5 under 35 U.S.C. §102(e) as being anticipated by Eaton et al. published application No. 2004/0045551. Claim 3, on which claims 4-6 depend, requires a first arm which has a first pin mounted adjacent a free end of the first arm, a second arm which has a second pin mounted adjacent a free end of the second arm in axial alignment with the first pin, and requires that the brow bar rotates on the first and second pins. Such a structure is not shown in Eaton et al. Eaton et al. does not have either the first and second pins and does not have pins on a bridge on which its brow bar rotates. Referring to Eaton et al. paragraph [0038], the reference 64 refers to arcuate tongues on the bridge (not pins) and the reference 65 refers to arcuate grooves (not openings) on the bridge. The brow bar slides along an arcuate path defined by the grooves 65. As the brow bar slides on an arcuate path relative to the bridge, it rotates about a virtual axis which is defined by the center of the arcuate grooves 65 and is spaced a distance from the brow bar or forehead support bracket. Thus, the Eaton et al. bridge does not have pins on which the brow bar rotates. Therefore, claim 3 and dependent claims 4-6 cannot be anticipated by Eaton et al.

Claim 5 is dependent on claims 3 and 4 and further requires that the pins have ends which are angled for deflecting the first and second resilient arms when the free end of the bridge is inserted into the space between the first and second openings.

Eaton et al. does not have pins as claimed and since there are no pins, there are no angled pin ends. Therefore, claim 5 also is clearly not anticipated by Eaton et al.

Since Eaton et al. does not disclose elements of the rejected claims, the rejection under 35 U.S.C. §102(e) must be withdrawn.

Applicants respectfully traverse the rejection of claim 6 under 35 U.S.C. §103(a) as being unpatentable over the Eaton et al. publication and Lang patent 6,712,072. Claim 6 is dependent on claim 2 and is patentable over Eaton et al. for the reasons discussed above. Claim 6 sets forth details of headgear for the claimed mask. The claimed headgear must include a continuous lower strap which extends continuously around a mask user's head during use of the mask. Lang was cited for its headgear disclosure. However, the Lang headgear is different from the claimed headgear. The Lang mask cannot be removed from a user without also removing the attached headgear from the user. Lang's lower strap cannot extend continuously around a mask user's head, as required by the claim. Further, neither the Eaton et al. mask have a recess on the lower portion of the mask adapted to received a continuous lower strap. The Lang headgear includes a lower strap which has two free ends which are secured to openings on opposite sides of the mask. Lang does not describe how its headgear is used. However, it appears that the elastic headgear is slipped over a user's head after it is attached to the mask. Eaton et al. attaches two ends of a lower strap (not shown) of its headgear to the masks body using clips 32. The lower strap does not extend around the mask user's head. Consequently, claim 6 is patentable and the rejection under 35 U.S.C. §103(a) should be withdrawn.

Please extend the time for responding to the office action to the mailing date of this response as per the enclosed petition which authorizes charging the extension fee to MacMillan, Sobanski & Todd, LLC, deposit account No. 13-0005.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Enclosure

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